

**Introduced by Committee on Budget and Fiscal Review**

January 10, 2011

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~~An act relating to the Budget Act of 2011.~~ *An act to amend Sections 6452.1, 17052.6, 18510, 19116, 19164, 19504, 19774, and 19777 of, to add Sections 19266 and 19560.5 to, to add the headings of Article 1 (commencing with Section 19751), Article 2 (commencing with Section 19755), and Article 4 (commencing with Section 19772) to, and to add Article 3 (commencing with Section 19761) to, Chapter 9.5 of Part 10.2 of Division 2 of, and to repeal and amend Sections 19751, 19752, 19753, 19754, and 19755 of, the Revenue and Taxation Code, relating to taxation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately, bill related to the budget.*

LEGISLATIVE COUNSEL'S DIGEST

SB 86, as amended, Committee on Budget and Fiscal Review. ~~Budget Act of 2011.~~ *Tax administration: Franchise Tax Board: State Board of Equalization.*

*(1) The Sales and Use Tax Law generally provides, for a transaction not subject to sales tax, that every person storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer for storage, use, or other consumption in this state is liable for use tax, and must pay the use tax to the State Board of Equalization, unless that person has paid the use tax to a retailer registered to collect the tax. Existing law authorizes an eligible person to make an irrevocable election to report qualified use tax, as defined, on that person's income tax return.*

*This bill would, for taxable years beginning on or after January 1, 2011, authorize an eligible person, for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than \$1,000, to either report the estimated amount of use tax due based on the person's California adjusted gross income as reflected in the use tax table shown in the accompanying instructions of the acceptable tax return or the actual amount of use tax that was not paid to a registered retailer. This bill would require the Franchise Tax Board to revise the accompanying instructions for the income tax forms to include the use tax table.*

*(2) The Personal Income Tax Law, in modified informality with federal income tax laws, authorizes a refundable credit against the taxes imposed by that law for household and dependent care expenses necessary for gainful employment, as provided.*

*This bill would make that credit nonrefundable.*

*(3) Existing law imposes various duties on the Franchise Tax Board with respect to the imposition of penalties in connection with tax avoidance, and partially conforms to federal income tax laws with respect to the penalties imposed.*

*This bill, in modified conformity with federal income tax laws, would revise the penalties imposed on underpayments, as specified.*

*The bill would also require the Franchise Tax Board to develop and administer a voluntary compliance initiative, as specified, to be conducted during the period from August 1, 2011, to October 31, 2011, inclusive, and to apply to tax liabilities attributable to the use of abusive tax avoidance transactions and unreported income from the use of offshore financial arrangements, as specified, for taxable years beginning before January 1, 2011. The bill would require the Franchise Tax Board to issue forms and instructions, and to publicize the initiative to maximize public awareness and participation. The bill would authorize any taxpayer meeting the requirements to elect to participate in the voluntary compliance initiative, subject to specified requirements and limitations. For a taxpayer who elects to comply, this bill would waive or abate all penalties, including criminal penalties, as a result of the unreported tax liabilities, except as specified.*

*The bill would extend the timeframe in which a notice of a proposed deficiency assessment for an abusive tax avoidance transaction may be mailed to a taxpayer from within 8 to 12 years after the return was filed, for notices mailed on or after August 1, 2011.*

(4) Existing laws require the Franchise Tax Board to administer specified taxes and collect those taxes from delinquent tax debtors.

This bill would require the board, in coordination with financial institutions doing business in this state, to operate a Financial Institution Record Match System utilizing automated data exchanges to the maximum extent feasible in order to allow the board to match its list of delinquent tax debtors with the lists provided by the financial institutions. The bill would authorize the board to disclose specified taxpayer information for purposes of data matching, to institute civil proceedings to enforce specified provisions of the bill, and would impose specified penalties on financial institutions for failure to provide records in connection with the match system, as provided. This bill would provide that the specified use of certain data is a misdemeanor.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) This bill would appropriate \$1,000 from the General Fund to the State Board of Equalization for administrative operations.

(6) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. Governor Schwarzenegger issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010. Governor Brown issued a proclamation on January 20, 2011, declaring and reaffirming that a fiscal emergency exists and stating that his proclamation supersedes the earlier proclamation for purpose of that constitutional provision.

This bill would state that it addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation issued on January 20, 2011, pursuant to the California Constitution.

(7) This bill would declare that it is to take immediate effect as an urgency statute and a bill providing for appropriations related to the Budget Bill.

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2011.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: ~~no~~-yes. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 6452.1 of the Revenue and Taxation Code*  
2     *is amended to read:*

3     6452.1. (a) Notwithstanding Section 6451, every person that  
4     purchases tangible personal property, the storage, use, or other  
5     consumption of which is subject to qualified use tax, as defined  
6     in subdivision (d), that is otherwise required to report and remit  
7     that tax pursuant to this part, may elect to report and remit qualified  
8     use tax on an acceptable tax return.

9     (b) (1) A person that reports qualified use tax on an acceptable  
10    tax return is deemed to have made the election authorized by this  
11    section.

12    (2) (A) In the case of a married individual filing a separate  
13    California personal income tax return, an election may be made  
14    to report either one-half of the qualified use tax or the entire  
15    qualified use tax on his or her separate California personal income  
16    tax return.

17    (B) If an individual elects to report one-half of the qualified use  
18    tax, that election will not be binding with respect to the remaining  
19    one-half of the qualified use tax owed by that individual and that  
20    individual's spouse.

21    (c) An election to report qualified use tax on an acceptable tax  
22    return shall be irrevocable. An acceptable tax return that contains  
23    use tax shall be considered a tax return for purposes of this part.

24    (d) For purposes of this section:

25    (1) "Acceptable tax return" means a timely filed original return  
26    that is filed pursuant to Article 1 (commencing with Section  
27    18501), Article 2 (commencing with Section 18601), Section  
28    18633, Section 18633.5 of Chapter 2 (commencing with Section  
29    18501) of Part 10.2, or Article 3 (commencing with Section 23771)  
30    of Chapter 4 of Part 11.

31    (2) (A) Except as provided in subparagraph (B), "qualified use  
32    tax" means ~~the~~ *either of the following:*

33    (i) *For one or more single nonbusiness purchases of individual*  
34    *items of tangible personal property each with a sales price of less*  
35    *than one thousand dollars (\$1,000), either of the following:*

36    (I) *The use tax imposed under this part, ~~Section 35 of Article~~*  
37    *XIII of the California Constitution, in conformity with the*  
38    *Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5*

(commencing with Section 7200)), or in accordance with the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)) that has not been paid to a retailer holding a seller's permit or certificate of registration-use tax.

(II) *The estimated amount of use tax as calculated by the board. The board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by July 30 of each calendar year make available to Franchise Tax Board such amounts in the form of a use tax table as part of the accompanying instructions of the acceptable tax return.*

(ii) *For one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of one thousand dollars (\$1,000) or more, or for any tangible personal property purchased for use in a trade or business, the amount of use tax imposed under this part, Article XIII of the California Constitution, the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)) that has not been paid to a retailer holding a seller's permit or certificate of registration-use tax.*

(B) "Qualified use tax" does not include:

(i) Use tax imposed on the storage, use, or other consumption of a mobilehome or a commercial coach that is required to be registered annually pursuant to the Health and Safety Code or use tax ~~that applies to~~ *imposed on the storage, use, or other consumption* of a vehicle subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, or a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code.

(ii) Use tax imposed on the storage, use, or other consumption of a vehicle, vessel, or aircraft.

(iii) Use tax imposed on a lease of tangible personal property.

(iv) Use tax imposed on ~~a purchase~~ *the storage, use, or other consumption* of cigarettes, tobacco products, or cigarettes and tobacco products for which the purchaser is registered with the board as a cigarette consumer, a tobacco products consumer, or a cigarette and tobacco products consumer.

(e) (1) If a person elects to report qualified use tax on an acceptable tax return, that person shall report and remit the

1 qualified use tax by reporting the amount due based on all taxable  
2 purchases of tangible personal property made during the taxable  
3 year for which the acceptable tax return is required to be filed. A  
4 *person that has made one or more single nonbusiness purchases*  
5 *of individual items of tangible personal property each with a sales*  
6 *price of less than one thousand dollars (\$1,000) may satisfy his*  
7 *or her tax liability for those purchases by using the use tax table*  
8 *shown in the accompanying instructions of the acceptable tax*  
9 *return.*

10 (2) The qualified use tax shall be reported on and remitted with  
11 an acceptable tax return that is required to be filed for the taxable  
12 year in which the liability for the qualified use tax was incurred.

13 (f) (1) The penalties and interest imposed under this part, in  
14 conformity with the Bradley-Burns Uniform Local Sales and Use  
15 Tax Law (Part 1.5 (commencing with Section 7200)), or in  
16 accordance with the Transactions and Use Tax Law (Part 1.6  
17 (commencing with Section 7251)) shall apply to use tax reported  
18 as qualified use tax on an acceptable return.

19 (2) Any claims for refunds or credits of any use tax reported as  
20 qualified use tax on an acceptable tax return shall be made in  
21 accordance with Chapter 7 (commencing with Section 6901) of  
22 this part.

23 (3) Qualified use tax shall be considered to be timely reported  
24 and remitted for purposes of this part, in conformity with the  
25 Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5  
26 (commencing with Section 7200)), and in accordance with the  
27 Transactions and Use Tax Law (Part 1.6 (commencing with Section  
28 7251)), if the qualified use tax is timely reported on and remitted  
29 with an acceptable tax return in accordance with the provisions of  
30 this section.

31 (g) Notwithstanding a person's payment of qualified use tax on  
32 an acceptable tax return, the board is not precluded from making  
33 any determinations for understatements of qualified use tax against  
34 that person in accordance with ~~Part 5 (commencing with Section~~  
35 ~~6451)~~ *this chapter. However, with respect to one or more single*  
36 *nonbusiness purchases of individual items of tangible personal*  
37 *property each with a sales price of less than one thousand dollars*  
38 *(\$1,000), the board shall be precluded from making any such*  
39 *determination against any person who uses the use tax table for*

*purposes of satisfying his or her use tax liability when the person uses that table in accordance with the accompanying instructions.*

(h) Any payments and credits shown on the return, together with any other credits associated with that person's account, of a person that elects to report qualified use tax on an acceptable tax return shall be applied in the following order:

(1) Taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), including penalties and interest, if any, imposed under Part 10.2 (commencing with Section 18401).

(2) Qualified use tax reported on the acceptable tax return in accordance with this section.

(i) (1) This section does not apply to a person who is otherwise required to hold a seller's permit or to register with the State Board of Equalization pursuant to Part 1 (commencing with Section 6001) of this division.

(2) This section applies to purchases of tangible personal property made on or after January 1, 2010, in taxable years beginning on or after January 1, 2010.

(3) *The amendments made by the act adding this paragraph shall apply to purchases of tangible personal property made on or after January 1, 2011, in taxable years beginning on or after January 1, 2011.*

SEC. 2. *Section 17052.6 of the Revenue and Taxation Code is amended to read:*

17052.6. (a) For each taxable year beginning on or after January 1, 2000, there shall be allowed as a credit against the "net tax", as defined in Section 17039, an amount determined in accordance with Section 21 of the Internal Revenue Code, except that the amount of the credit shall be a percentage, as provided in subdivision (b) of the allowable federal credit without taking into account whether there is a federal tax liability.

(b) For the purposes of subdivision (a), the percentage of the allowable federal credit shall be determined as follows:

(1) For taxable years beginning before January 1, 2003:

If the adjusted gross income is:	The percentage of credit is:
\$40,000 or less.....	63%
Over \$40,000 but not over \$70,000.....	53%

1		The percentage of
2	If the adjusted gross income is:	credit is:
3	Over \$70,000 but not over \$100,000.....	42%
4	Over \$100,000.....	0%

(2) For taxable years beginning on or after January 1, 2003:

8		The percentage of
9	If the adjusted gross income is:	credit is:
10	\$40,000 or less.....	50%
11	Over \$40,000 but not over \$70,000.....	43%
12	Over \$70,000 but not over \$100,000.....	34%
13	Over \$100,000.....	0%

~~(e) In the case of a taxpayer whose credits provided under this section exceed the taxpayer's tax liability computed under this part, the excess shall be credited against other amounts due, if any, from the taxpayer and the balance, if any, shall be paid from the Tax Relief and Refund Account and refunded to the taxpayer.~~

~~(d)~~

(c) For purposes of this section, "adjusted gross income" means adjusted gross income as computed for purposes of paragraph (2) of subdivision (h) of Section 17024.5.

~~(e)~~

(d) The credit authorized by this section shall be limited, as follows:

(1) Employment-related expenses, within the meaning of Section 21 of the Internal Revenue Code, shall be limited to expenses for household services and care provided in this state.

(2) Earned income, within the meaning of Section 21(d) of the Internal Revenue Code, shall be limited to earned income subject to tax under this part. For purposes of this paragraph, compensation received by a member of the armed forces for active services as a member of the armed forces, other than pensions or retired pay, shall be considered earned income subject to tax under this part, whether or not the member is domiciled in this state.

~~(f)~~

(e) For purposes of this section, Section 21(b)(1) of the Internal Revenue Code, relating to a qualifying individual, is modified to additionally provide that a child, as defined in Section 151(c)(3)

1 of the Internal Revenue Code, shall be treated, for purposes of  
2 Section 152 of the Internal Revenue Code, as applicable for  
3 purposes of this section, as receiving over one-half of his or her  
4 support during the calendar year from the parent having custody  
5 for a greater portion of the calendar year, that parent shall be treated  
6 as a “custodial parent,” within the meaning of Section 152(e) of  
7 the Internal Revenue Code, as applicable for purposes of this  
8 section, and the child shall be treated as a qualifying individual  
9 under Section 21(b)(1) of the Internal Revenue Code, as applicable  
10 for purposes of this section, if both of the following apply:

11 (1) The child receives over one-half of his or her support during  
12 the calendar year from his or her parents who never married each  
13 other and who lived apart at all times during the last six months  
14 of the calendar year.

15 (2) The child is in the custody of one or both of his or her parents  
16 for more than one-half of the calendar year.

17 ~~(g)~~

18 (f) The amendments to this section made by Section 1.5 of  
19 Chapter 824 of the Statutes of 2002 shall apply only to taxable  
20 years beginning on or after January 1, 2002.

21 (g) *The amendments made to this section by the act adding this*  
22 *subdivision shall apply to taxable years beginning on or after*  
23 *January 1, 2011.*

24 SEC. 3. *Section 18510 of the Revenue and Taxation Code is*  
25 *amended to read:*

26 18510. (a) (1) The Franchise Tax Board shall revise the returns  
27 required to be filed pursuant to this article, Article 2 (commencing  
28 with Section 18601), Section 18633, Section 18633.5, and Article  
29 3 (commencing with Section 23771) of Chapter 4 of Part 11, and  
30 the accompanying instructions for filing those returns, in a form  
31 and manner approved by the State Board of Equalization, to allow  
32 a person to report and pay qualified use tax in accordance with the  
33 provisions of Section 6452.1.

34 (2) Within 10 working days of receiving from the Franchise  
35 Tax Board the returns and instructions described in paragraph (1),  
36 the State Board of Equalization shall do either of the following:

37 (A) Approve the form and manner of the returns *and instructions*  
38 and notify the Franchise Tax Board of this approval.

39 (B) Submit comments to the Franchise Tax Board regarding  
40 changes to the returns *and instructions* that shall be incorporated

1 before the State Board of Equalization approves the form and  
2 manner of the returns *and instructions*.

3 (b) Any payments and credits shown on the return, together  
4 with any other credits associated with that person's account, of a  
5 person that elects to report qualified use tax on an acceptable tax  
6 return shall be applied in the following order:

7 (1) Taxes imposed under Part 10 (commencing with Section  
8 17001) or Part 11 (commencing with Section 23001), including  
9 penalties and interest, if any, imposed under this part.

10 (2) Qualified use tax as reported on the acceptable tax return,  
11 in accordance with Section 6452.1.

12 (c) The Franchise Tax Board shall transfer the qualified use tax  
13 received pursuant to Section 6452.1, and any information the State  
14 Board of Equalization deems necessary for its administration of  
15 the use tax, to the State Board of Equalization within 60 days from  
16 the date the use tax is received or the acceptable tax return is  
17 processed, whichever is later.

18 (d) This section shall be operative for returns filed for taxable  
19 years beginning on and after January 1, 2010.

20 (e) *The amendments made by the act adding this subdivision*  
21 *shall apply to returns filed for taxable years beginning on and*  
22 *after January 1, 2011.*

23 *SEC. 4. Section 19116 of the Revenue and Taxation Code is*  
24 *amended to read:*

25 19116. (a) In the case of an individual who files a return of  
26 tax imposed under Part 10 (commencing with Section 17001) for  
27 a taxable year on or before the due date for the return, including  
28 extensions, if the Franchise Tax Board does not provide a notice  
29 to the taxpayer specifically stating the taxpayer's liability and the  
30 basis of the liability before the close of the notification period, the  
31 Franchise Tax Board shall suspend the imposition of any interest,  
32 penalty, addition to tax, or additional amount with respect to any  
33 failure relating to the return which is computed by reference to the  
34 period of time the failure continues to exist and which is properly  
35 allocable to the suspension period.

36 (b) For purposes of this section:

37 (1) Except as provided in subdivision (e), "notification period"  
38 means the 36-month period beginning on the later of either of the  
39 following:

40 (A) The date on which the return is filed.

1 (B) The due date of the return without regard to extensions.

2 (2) “Suspension period” means the period beginning on the day  
3 after the close of the notification period and ending on the date  
4 which is 15 days after the date on which notice described in  
5 subdivision (a) is provided by the Franchise Tax Board.

6 (3) If, after the return for a taxable year is filed, the taxpayer  
7 provides to the Franchise Tax Board one or more signed written  
8 documents showing that the taxpayer owes an additional amount  
9 of tax for the taxable year, paragraph (1) shall be applied by  
10 substituting the date the last of the documents was provided for  
11 the date on which the return was filed.

12 (c) This section shall be applied separately with respect to each  
13 item or adjustment.

14 (d) This section shall not apply to any of the following:

15 (1) Any penalty imposed by Section 19131.

16 (2) Any penalty imposed by Section 19132.

17 (3) Any interest, penalty, addition to tax, or additional amount  
18 involving fraud.

19 (4) Any interest, penalty, addition to tax, or additional amount  
20 with respect to any tax liability shown on the return.

21 (5) Any criminal penalty.

22 (6) Any interest, penalty, addition to tax, or additional amount  
23 with respect to any gross misstatement.

24 (7) Any interest, penalty, addition to tax, or additional amount  
25 relating to any reportable transaction with respect to which the  
26 requirements of Section 6664(d)(2)(A) of the Internal Revenue  
27 Code are not met, and any listed transaction, as defined in Section  
28 6707A(c) of the Internal Revenue Code.

29 (8) *Any interest, penalty, addition to tax, or additional amount*  
30 *relating to any abusive tax avoidance transaction, as defined in*  
31 *Section 19777, as amended by the act adding this paragraph.*

32 (e) For taxpayers required by subdivision (a) of Section 18622  
33 to report a change or correction by the Commissioner of Internal  
34 Revenue or other officer of the United States or other competent  
35 authority the following rules shall apply:

36 (1) The notification period under subdivision (a) shall be either  
37 of the following:

38 (A) One year from the date the notice required by Section 18622  
39 is filed with the Franchise Tax Board by the taxpayer or the Internal  
40 Revenue Service, if the taxpayer or the Internal Revenue Service

1 reports that change or correction within six months after the final  
2 federal determination.

3 (B) Two years from the date when the notice required by Section  
4 18622 is filed with the Franchise Tax Board by the taxpayer or the  
5 Internal Revenue Service, if after the six-month period required  
6 in Section 18622, a taxpayer or the Internal Revenue Service  
7 reports a change or correction.

8 (2) The suspension period under subdivision (a) shall mean the  
9 period beginning on the day after the close of the notification  
10 period under paragraph (1) and ending on the date which is 15  
11 days after the date on which notice described in subdivision (a) is  
12 provided by the Franchise Tax Board.

13 (f) For notices sent after January 1, 2004, this section does not  
14 apply to taxpayers with taxable income greater than two hundred  
15 thousand dollars (\$200,000) that have been contacted by the  
16 Franchise Tax Board regarding the use of a potentially abusive tax  
17 shelter ~~(within the meaning of Section 19777) as defined by Section~~  
18 *19777, as added by Chapter 656 of the Statutes of 2003 and*  
19 *amended by Section 331 of Chapter 183 of the Statutes of 2004.*

20 (g) This section shall apply to taxable years ending after October  
21 10, 1999.

22 (h) The amendments made to this section by Chapter 691 of the  
23 Statutes of 2005 shall apply to notices sent after January 1, 2005.

24 (i) (1) The amendments made to paragraph (1) of subdivision  
25 (b) ~~by the act adding this subdivision Chapter 14 of the Statutes~~  
26 *of 2010* shall apply to notices provided after January 1, 2011.

27 (2) Paragraph (3) of subdivision (b), as added by ~~the act adding~~  
28 *this subdivision Chapter 14 of the Statutes of 2010*, shall apply to  
29 documents provided on or after January 1, 2011.

30 (3) *Paragraph (8) of subdivision (d), as added by the act adding*  
31 *this paragraph, shall apply to notices provided, or amended returns*  
32 *filed, on or after January 1, 2012.*

33 *SEC. 5. Section 19164 of the Revenue and Taxation Code is*  
34 *amended to read:*

35 19164. (a) (1) (A) An accuracy-related penalty shall be  
36 imposed under this part and shall be determined in accordance  
37 with Section 6662 of the Internal Revenue Code, relating to  
38 imposition of accuracy-related penalty on underpayments, *as*  
39 *amended by Section 1409(b) of the Health Care and Education*

1 *Reconciliation Act of 2010 (Public Law 111-152)*, except as  
2 otherwise provided.

3 (B) (i) Except for understatements relating to reportable  
4 transactions to which Section 19164.5 applies, in the case of any  
5 proposed deficiency assessment issued after the last date of the  
6 amnesty period specified in Chapter 9.1 (commencing with Section  
7 19730) for any taxable year beginning prior to January 1, 2003,  
8 the penalty specified in Section 6662(a) of the Internal Revenue  
9 Code shall be computed by substituting “40 percent” for “20  
10 percent.”

11 (ii) Clause (i) shall not apply to any taxable year of a taxpayer  
12 beginning prior to January 1, 2003, if, as of the start date of the  
13 amnesty program period specified in Section 19731, the taxpayer  
14 is then under audit by the Franchise Tax Board, or the taxpayer  
15 has filed a protest under Section 19041, or the taxpayer has filed  
16 an appeal under Section 19045, or the taxpayer is engaged in  
17 settlement negotiations under Section 19442, or the taxpayer has  
18 a pending judicial proceeding in any court of this state or in any  
19 federal court relating to the tax liability of the taxpayer for that  
20 taxable year.

21 (2) With respect to corporations, this subdivision shall apply to  
22 all of the following:

23 (A) All taxable years beginning on or after January 1, 1990.

24 (B) Any other taxable year for which an assessment is made  
25 after July 16, 1991.

26 (C) For purposes of this section, references in Section 6662(e)  
27 of the Internal Revenue Code and the regulations thereunder,  
28 relating to treatment of an affiliated group that files a consolidated  
29 federal return, are modified to apply to those entities required to  
30 be included in a combined report under Section 25101 or 25110.  
31 For these purposes, entities included in a combined report pursuant  
32 to paragraph (4) or (6) of subdivision (a) of Section 25110 shall  
33 be considered only to the extent required to be included in the  
34 combined report.

35 (3) Section 6662(d)(1)(B) of the Internal Revenue Code is  
36 modified to provide that in the case of a corporation, other than  
37 an “S” corporation, there is a substantial understatement of tax for  
38 any taxable year if the amount of the understatement for the taxable  
39 year exceeds the lesser of:

1 (A) Ten percent of the tax required to be shown on the return  
2 for the taxable year (or, if greater, two thousand five hundred  
3 dollars (\$2,500)).

4 (B) Five million dollars (\$5,000,000).

5 (4) Section 6662(d)(2)(A) of the Internal Revenue Code is  
6 modified to additionally provide that the excess determined under  
7 Section 6662(d)(2)(A) of the Internal Revenue Code shall be  
8 determined without regard to items to which Section 19164.5  
9 applies and without regard to items with respect to which a penalty  
10 is imposed by Section 19774.

11 (5) The provisions of Sections 6662(e)(1) and 6662(h)(2) of the  
12 Internal Revenue Code shall apply to returns filed on or after  
13 January 1, 2010.

14 (b) For purposes of Section 6662(d) of the Internal Revenue  
15 Code, Section 6664 of the Internal Revenue Code, Section  
16 6694(a)(1) of the Internal Revenue Code, and this part, the  
17 Franchise Tax Board may prescribe a list of positions for which  
18 the Franchise Tax Board believes there is not substantial authority  
19 or there is no reasonable belief that the tax treatment is more likely  
20 than not the proper tax treatment. That list (and any revisions  
21 thereof) shall be published through the use of Franchise Tax Board  
22 Notices or other published positions. In addition, the “listed  
23 transactions” identified and published pursuant to the preceding  
24 sentence shall be published on the Web site of the Franchise Tax  
25 Board.

26 (c) A fraud penalty shall be imposed under this part and shall  
27 be determined in accordance with Section 6663 of the Internal  
28 Revenue Code, relating to imposition of fraud penalty, except as  
29 otherwise provided.

30 (d) (1) Section 6664 of the Internal Revenue Code, relating to  
31 definitions and special rules, shall apply, except as otherwise  
32 provided.

33 (2) ~~Section 6664(e)(2)~~ 6664(c)(3) of the Internal Revenue Code  
34 shall apply to returns filed on or after January 1, 2010.

35 (3) ~~Section 6664(e)(3)~~ 6664(c)(4) of the Internal Revenue Code  
36 shall apply to appraisals prepared with respect to returns or  
37 submissions filed on or after January 1, 2010.

38 (e) *Except for purposes of subdivision (e) of Section 19774,*  
39 *Section 6662(b)(6) of the Internal Revenue Code shall not apply.*

1 (f) Except for purposes of subdivision (e) of Section 19774,  
2 Section 6662(i) of the Internal Revenue Code, relating to increase  
3 in penalty in case of nondisclosed noneconomic substance  
4 transactions, shall not apply.

5 ~~(e)~~

6 (g) Section 6665 of the Internal Revenue Code, relating to  
7 applicable rules, shall apply, except as otherwise provided.

8 (h) The amendments made to this section by the act adding this  
9 subdivision shall apply to notices mailed on or after January 1,  
10 2012.

11 SEC. 6. Section 19266 is added to the Revenue and Taxation  
12 Code, to read:

13 19266. (a) (1) The Franchise Tax Board, in coordination with  
14 financial institutions doing business in this state, shall operate a  
15 Financial Institution Record Match System utilizing automated  
16 data exchanges to the maximum extent feasible.

17 (2) The Franchise Tax Board shall prescribe any rules and  
18 regulations that may be necessary or appropriate to implement  
19 this section. These rules and regulations shall include all of the  
20 following:

21 (A) A structure by which financial institutions, or their  
22 designated data-processing agents, shall receive from the  
23 Franchise Tax Board the file or files of delinquent debtors that  
24 the institution shall match with its own list of accountholders to  
25 identify delinquent tax debtor accountholders at the institution.

26 (B) An option by which financial institutions without the  
27 technical ability to process the data exchange, or without the ability  
28 to employ a third-party data processor to process the data  
29 exchange, may forward to the Franchise Tax Board a list of all  
30 accountholders and their social security numbers or other taxpayer  
31 identification numbers, so that the Franchise Tax Board shall  
32 match that list with the file or files of delinquent tax debtors.

33 (C) Authority for the Franchise Tax Board to exempt a financial  
34 institution from the requirements of this section if the Franchise  
35 Tax Board determines that the financial institution participation  
36 would not generate sufficient revenue to be cost effective for the  
37 Franchise Tax Board.

38 (D) Authority for the Franchise Tax Board to temporarily  
39 suspend the requirements of this section for a financial institution  
40 if the financial institution provides the Franchise Tax Board with

1 a written notice from its supervisory banking authority that it is  
2 determined to be undercapitalized, significantly undercapitalized,  
3 or critically undercapitalized as defined by FDIC Regulation  
4 325.103(b)(3), (4), and (5) or NCUA Regulation 702.102. The  
5 notice provided pursuant to this subparagraph shall be subject to  
6 the protections of Section 19542.

7 (b) The Financial Institution Record Match System shall not be  
8 subject to any limitation set forth in Chapter 20 (commencing with  
9 Section 7460) of Division 7 of Title 1 of the Government Code.  
10 However, any use of the information provided pursuant to this  
11 section for any purpose other than the collection of delinquent  
12 franchise or income tax or other debts referred to the Franchise  
13 Tax Board for collection, as imposed under Part 5 (commencing  
14 with Section 10701), Part 10 (commencing with Section 17001),  
15 Part 10.2 (commencing with Section 18401), or Part 11  
16 (commencing with Section 23001) shall be a violation of Section  
17 19542.

18 (c) (1) To effectuate the Financial Institution Record Match  
19 System, financial institutions subject to this section shall provide  
20 to the Franchise Tax Board on a quarterly basis the name, record  
21 address, and other addresses, social security number or other  
22 taxpayer identification number, and other identifying information  
23 for each delinquent tax debtor, as identified by the Franchise Tax  
24 Board by name and social security number or other taxpayer  
25 identification number, who maintains an account at the institution.

26 (2) The first data file created by the Franchise Tax Board for  
27 purposes of matching tax debtor records to financial institution  
28 accountholder records shall be limited to 600,000 tax debtor  
29 records. The number of tax debtor records included in a subsequent  
30 data file created by the Franchise Tax Board may be increased by  
31 no more than 600,000 tax debtor records greater than the number  
32 of tax debtor records included in the immediately preceding data  
33 file until all eligible tax debtor records are included in the data  
34 match file.

35 (d) Unless otherwise required by law, a financial institution  
36 furnishing a report or providing information to the Franchise Tax  
37 Board pursuant to this section shall not disclose to a depositor or  
38 an accountholder, or a codepositor or coaccountholder, that the  
39 name, address, social security number or other taxpayer  
40 identification number, or other identifying information of that

1 *delinquent tax debtor has been received from or furnished to the*  
2 *Franchise Tax Board.*

3 *(e) A financial institution shall incur no obligation or liability*  
4 *to any person arising from any of the following:*

5 *(1) Furnishing information to the Franchise Tax Board as*  
6 *required by this section.*

7 *(2) Failing to disclose to a depositor or accountholder that the*  
8 *name, address, social security number or other taxpayer*  
9 *identification number, or other identifying information of that*  
10 *delinquent tax debtor was included in the data exchange with the*  
11 *Franchise Tax Board required by this section.*

12 *(3) Any other action taken in good faith to comply with the*  
13 *requirements of this section.*

14 *(f) The Franchise Tax Board may institute civil proceedings to*  
15 *enforce this section.*

16 *(g) Any financial institution that willfully fails to comply with*  
17 *the rules and regulations promulgated by the Franchise Tax Board*  
18 *for the administration of delinquent tax collections, unless it is*  
19 *shown to the satisfaction of the Franchise Tax Board that the*  
20 *failure is due to reasonable cause, shall be assessed a penalty*  
21 *upon notice and demand of the Franchise Tax Board and collected*  
22 *in the same manner as tax. The penalty imposed under this section*  
23 *shall be in an amount equal to fifty dollars (\$50) for each record*  
24 *not provided, but the total imposed on that financial institution*  
25 *for all such failures during any calendar year shall not exceed one*  
26 *hundred thousand dollars (\$100,000).*

27 *(h) For purposes of this section:*

28 *(1) "Account" means a demand deposit account, share or share*  
29 *draft account, checking or negotiable withdrawal order account,*  
30 *savings account, time deposit account, or money market mutual*  
31 *fund account, regardless of whether the account bears interest.*

32 *(2) "Financial institution" means:*

33 *(A) A depository institution, as defined in Section 1813(c) of*  
34 *Title 12 of the United States Code.*

35 *(B) An institution-affiliated party, as defined in Section 1813(u)*  
36 *of Title 12 of the United States Code.*

37 *(C) A federal credit union or state credit union, as defined in*  
38 *Section 1752 of Title 12 of the United States Code, including an*  
39 *institution-affiliated party of a credit union, as defined in Section*  
40 *1786(r) of Title 12 of the United States Code.*

1 (D) A benefit association, insurance company, safe deposit  
2 company, money-market fund, or similar entity authorized to do  
3 business in this state.

4 (3) “Delinquent tax debtor” means any person liable for any  
5 income or franchise tax or other debt referred to the Franchise  
6 Tax Board for collection as imposed under Part 5 (commencing  
7 with Section 10701), Part 10 (commencing with Section 17001),  
8 Part 10.2 (commencing with Section 18401), or Part 11  
9 (commencing with Section 23001), including tax, penalties, interest,  
10 and fees, where the tax or debt, including the amount, if any,  
11 referred to the Franchise Tax Board for collection remains unpaid  
12 after 30 days from demand for payment by the Franchise Tax  
13 Board, and the person is not making current timely installment  
14 payments on the liability under an agreement pursuant to Section  
15 19006.

16 (i) A financial institution shall be reimbursed by the Franchise  
17 Tax Board for actual costs incurred to implement the provisions  
18 of this section. Upon receipt of an invoice from the financial  
19 institution, cost reimbursement by the Franchise Tax Board shall  
20 be limited to the following:

21 (1) For one-time startup costs of a financial institution, no more  
22 than two thousand five hundred dollars (\$2,500).

23 (2) For data matching costs of a financial institution, other than  
24 one-time startup costs, no more than two hundred fifty dollars  
25 (\$250) per calendar quarter.

26 (j) The first data exchange for purposes of matching tax debtor  
27 records to financial institution account holder records shall occur  
28 no earlier than April 1, 2012.

29 (k) This section shall be operative 120 days after the effective  
30 date of the act adding this section and shall apply with respect to  
31 persons that are delinquent tax debtors on and after that date.

32 SEC. 7. Section 19504 of the Revenue and Taxation Code is  
33 amended to read:

34 19504. (a) The Franchise Tax Board, for the purpose of  
35 administering its duties under this part, including ascertaining the  
36 correctness of any return; making a return where none has been  
37 made; determining or collecting the liability of any person in  
38 respect of any liability imposed by Part 10 (commencing with  
39 Section 17001), Part 11 (commencing with Section 23001), or this  
40 part (or the liability at law or in equity of any transferee in respect

of that liability); shall have the power to require by demand, that an entity of any kind including, but not limited to, employers, persons, or financial institutions provide information or make available for examination or copying at a specified time and place, or both, any book, papers, or other data which may be relevant to that purpose. Any demand to a financial institution shall comply with the California Right to Financial Privacy Act set forth in Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code. Information that may be required upon demand includes, but is not limited to, any of the following:

(1) Addresses and telephone numbers of persons designated by the Franchise Tax Board.

(2) Information contained on Federal Form W-2 (Wage and Tax Statement), Federal Form W-4 (Employee's Withholding Allowance Certificate), or State Form DE-4 (Employee's Withholding Allowance Certificate).

(b) The Franchise Tax Board may require the attendance of the taxpayer or of any other person having knowledge in the premises and may take testimony and require material proof for its information and administer oaths to carry out this part.

(c) (1) The Franchise Tax Board may issue subpoenas or subpoenas duces tecum, which subpoenas must be signed by any member of the Franchise Tax Board, and may be served on any person for any purpose.

(2) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of a ~~potentially abusive tax shelter (within the meaning of Section 19777)~~ *an abusive tax avoidance transaction, as defined in Section 19777*, the subpoena may be signed by any member of the Franchise Tax Board, the Executive Officer of the Franchise Tax Board, or any designee.

(d) Obedience to subpoenas or subpoenas duces tecum issued in accordance with this section may be enforced by application to the superior court as set forth in Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(e) When examining a return, the Franchise Tax Board shall not use financial status or economic reality examination techniques to determine the existence of unreported income of any taxpayer unless the Franchise Tax Board has a reasonable indication that

1 there is a likelihood of unreported income. This subdivision applies  
2 to any examination beginning on or after October 10, 1999.

3 (f) *The amendments made to this section by the act adding this*  
4 *subdivision shall apply to subpoenas issued on or after the effective*  
5 *date of the act adding this subdivision.*

6 SEC. 8. *Section 19560.5 is added to the Revenue and Taxation*  
7 *Code, to read:*

8 *19560.5. Notwithstanding any law to the contrary, to effectuate*  
9 *the Financial Institution Record Match System prescribed under*  
10 *Section 19266, the Franchise Tax Board may disclose the name*  
11 *and social security number or taxpayer identification number to*  
12 *designated financial institutions or their authorized processing*  
13 *agent for purposes of matching debtor records to accountholder*  
14 *records at the financial institution. Any use of the data provided*  
15 *by the Franchise Tax Board for a purpose other than those*  
16 *identified by Section 19266 is prohibited and considered a violation*  
17 *of Section 19542.*

18 SEC. 9. *The heading of Article 1 (commencing with Section*  
19 *19751) is added to Chapter 9.5 of Part 10.2 of Division 2 of the*  
20 *Revenue and Taxation Code, immediately preceding Section 19751,*  
21 *to read:*

22  
23 *Article 1. Voluntary Compliance Initiative One*  
24

25 SEC. 10. *Section 19751 of the Revenue and Taxation Code, as*  
26 *added by Section 13 of Chapter 654 of the Statutes of 2003, is*  
27 *repealed.*

28 ~~19751. (a) The Franchise Tax Board shall develop and~~  
29 ~~administer a voluntary compliance initiative for taxpayers subject~~  
30 ~~to Part 10 (commencing with Section 17001) and Part 11~~  
31 ~~(commencing with Section 23001), as provided in this chapter.~~

32 ~~(b) The voluntary compliance initiative shall be conducted~~  
33 ~~during the period from January 1, 2004, to April 15, 2004,~~  
34 ~~inclusive, pursuant to Section 19754. This initiative shall apply to~~  
35 ~~tax liabilities attributable to the use of abusive tax avoidance~~  
36 ~~transactions for taxable years beginning before January 1, 2003.~~

37 ~~(c) The Franchise Tax Board shall issue forms and instructions~~  
38 ~~and may take any other actions necessary, including the use of~~  
39 ~~closing agreements, to implement this chapter.~~

1 ~~(d) The Franchise Tax Board shall publicize the voluntary~~  
2 ~~compliance initiative so as to maximize public awareness of and~~  
3 ~~participation in the initiative. The Franchise Tax Board shall~~  
4 ~~coordinate to the highest degree possible its publicity efforts and~~  
5 ~~other actions taken in implementing this chapter.~~

6 ~~(e) Any correspondence mailed by the Franchise Tax Board to~~  
7 ~~a taxpayer at the taxpayer's last known address outlining the~~  
8 ~~voluntary compliance initiative under this chapter constitutes~~  
9 ~~"contact" within the meaning of Treasury Regulation Section~~  
10 ~~1.6664-2(e)(3), relating to qualified amended returns, and~~  
11 ~~paragraph (3) of subdivision (e) of Section 19773 and Section~~  
12 ~~19777, regarding increased interest rate.~~

13 *SEC. 11. Section 19751 of the Revenue and Taxation Code, as*  
14 *added by Section 13 of Chapter 656 of the Statutes of 2003, is*  
15 *amended to read:*

16 19751. (a) The Franchise Tax Board shall develop and  
17 administer a voluntary compliance initiative for taxpayers subject  
18 to Part 10 (commencing with Section 17001) and Part 11  
19 (commencing with Section 23001), as provided in this ~~chapter~~  
20 *article.*

21 (b) The voluntary compliance initiative shall be conducted  
22 during the period from January 1, 2004, to April 15, 2004,  
23 inclusive, pursuant to Section 19754. This initiative shall apply to  
24 tax liabilities attributable to the use of abusive tax avoidance  
25 transactions for taxable years beginning before January 1, 2003.

26 (c) The Franchise Tax Board shall issue forms and instructions  
27 and may take any other actions necessary, including the use of  
28 closing agreements, to implement this ~~chapter~~ *article.*

29 (d) The Franchise Tax Board shall publicize the voluntary  
30 compliance initiative so as to maximize public awareness of and  
31 participation in the initiative. The Franchise Tax Board shall  
32 coordinate to the highest degree possible its publicity efforts and  
33 other actions taken in implementing this ~~chapter~~ *article.*

34 (e) Any correspondence mailed by the Franchise Tax Board to  
35 a taxpayer at the taxpayer's last known address outlining the  
36 voluntary compliance initiative under this ~~chapter~~ *article*  
37 constitutes "contact" within the meaning of Treasury Regulation  
38 Section 1.6664-2(c)(3), relating to qualified amended returns, and  
39 paragraph (3) of *the former* subdivision (e) of Section 19773 and  
40 Section 19777, regarding increased interest rate.

1     ~~SEC. 12. Section 19752 of the Revenue and Taxation Code, as~~  
2     ~~added by Section 13 of Chapter 654 of the Statutes of 2003, is~~  
3     ~~repealed.~~

4     ~~19752. Any taxpayer who meets the requirements of Section~~  
5     ~~19754 may elect the application of either, but not both, of the~~  
6     ~~following:~~

7     ~~(a) Voluntary compliance without appeal. If this option is~~  
8     ~~elected, then each of the following shall apply:~~

9     ~~(1) The Franchise Tax Board shall waive or abate all penalties~~  
10    ~~imposed by this part, for all taxable years where the taxpayer elects~~  
11    ~~to participate in the initiative, as a result of the underreporting of~~  
12    ~~tax liabilities attributable to the use of abusive tax avoidance~~  
13    ~~transactions.~~

14    ~~(2) Except as provided in Section 19753, no criminal action~~  
15    ~~shall be brought against the taxpayer for the taxable years with~~  
16    ~~respect to issues for which the taxpayer voluntarily complies under~~  
17    ~~this chapter.~~

18    ~~(3) No penalty may be waived or abated under this chapter if~~  
19    ~~the penalty imposed is attributable to an assessment of taxes that~~  
20    ~~became final prior to December 31, 2003.~~

21    ~~(4) Notwithstanding Chapter 6 (commencing with Section~~  
22    ~~19301) of this part, the taxpayer may not file a claim for refund~~  
23    ~~for the amounts paid in connection with abusive tax avoidance~~  
24    ~~transactions under this chapter.~~

25    ~~(b) Voluntary compliance with appeal. If this option is elected,~~  
26    ~~then each of the following shall apply:~~

27    ~~(1) The Franchise Tax Board shall waive or abate all penalties,~~  
28    ~~except the accuracy-related penalty under Section 19164 (as in~~  
29    ~~effect immediately before enactment of the act adding this section),~~  
30    ~~imposed by this part, for each of the taxable years for which the~~  
31    ~~taxpayer elects to participate in the initiative, that are owed as a~~  
32    ~~result of the underreporting of tax liabilities attributable to the use~~  
33    ~~of abusive tax avoidance transactions.~~

34    ~~(2) Except as provided in Section 19753, no criminal action~~  
35    ~~may be brought against the taxpayer for each of the taxable years~~  
36    ~~for which the taxpayer voluntarily complies under this section.~~

37    ~~(3) No penalty may be waived under this chapter if the penalty~~  
38    ~~imposed is attributable to an assessment of taxes that became due~~  
39    ~~and payable prior to December 31, 2003.~~

~~(4) The taxpayer may file a claim for refund under Chapter 6 (commencing with Section 19301) of this part. Notwithstanding Section 19331, the taxpayer may not file an appeal to the board until after either of the following:~~

~~(A) The date the Franchise Tax Board takes action on the claim for refund for the tax year to which this chapter applies.~~

~~(B) The later of either of the following dates:~~

~~(i) The date that is 180 days after the date of a final determination by the Internal Revenue Service with respect to the transaction or transactions to which this chapter applies.~~

~~(ii) The date that is four years after the date the claim for refund was filed or one year after full payment of all tax, including penalty and interest was made, whichever date is later.~~

~~(5) The taxpayer shall be subject to the accuracy-related penalty under Section 19164.~~

~~(A) The penalty may be assessed:~~

~~(i) When the Franchise Tax Board takes action on the claim for refund.~~

~~(ii) When a federal determination becomes final for the same issue, in which case the penalty shall be assessed (and may not be abated) if the penalty was assessed at the federal level.~~

~~(B) In determining the amount of the underpayment of tax, Treasury Regulation Section 1.6664-2(c)(2), as promulgated under Section 6664 of the Internal Revenue Code, relating to qualified amended returns, shall not apply. The amount of the underpayment is the difference between the amount of tax shown on the original return and the correct amount of tax for the taxable year. The underpayment amount shall not be less than the amount of the claim for refund filed by the taxpayer under paragraph (4) that was denied.~~

~~(C) The penalty is due and payable upon notice and demand pursuant to Section 19049. Only after the taxpayer has paid all amounts due, including the penalty, and the claim is denied in whole or in part, may the taxpayer file an appeal under Chapter 6 (commencing with Section 19301), of this part in conjunction with the appeal filed under paragraph (4).~~

~~(e) A taxpayer's election under this section shall be made for all taxable years of the taxpayer governed by this chapter. A separate election for each taxable year governed by this chapter is not allowed.~~

1     *SEC. 13. Section 19752 of the Revenue and Taxation Code, as*  
2     *added by Section 13 of Chapter 656 of the Statutes of 2003, is*  
3     *amended to read:*

4     19752. Any taxpayer who meets the requirements of Section  
5     19754 may elect the application of either, but not both, of the  
6     following:

7     (a) Voluntary compliance without appeal. If this option is  
8     elected, then each of the following shall apply:

9     (1) The Franchise Tax Board shall waive or abate all penalties  
10    imposed by this part, for all taxable years where the taxpayer elects  
11    to participate in the initiative, as a result of the underreporting of  
12    tax liabilities attributable to the use of abusive tax avoidance  
13    transactions.

14    (2) Except as provided in Section 19753, no criminal action  
15    shall be brought against the taxpayer for the taxable years with  
16    respect to issues for which the taxpayer voluntarily complies under  
17    this ~~chapter~~ article.

18    (3) No penalty may be waived or abated under this ~~chapter~~  
19    article if the penalty imposed is attributable to an assessment of  
20    taxes that became final prior to December 31, 2003.

21    (4) Notwithstanding Chapter 6 (commencing with Section  
22    19301) of this part, the taxpayer may not file a claim for refund  
23    for the amounts paid in connection with abusive tax avoidance  
24    transactions under this ~~chapter~~ article.

25    (b) Voluntary compliance with appeal. If this option is elected,  
26    then each of the following shall apply:

27    (1) The Franchise Tax Board shall waive or abate all penalties,  
28    except the accuracy related penalty under Section 19164 (as in  
29    effect immediately before enactment of the act adding this section),  
30    imposed by this part, for each of the taxable years for which the  
31    taxpayer elects to participate in the initiative, that are owed as a  
32    result of the underreporting of tax liabilities attributable to the use  
33    of abusive tax avoidance transactions.

34    (2) Except as provided in Section 19753, no criminal action  
35    may be brought against the taxpayer for each of the taxable years  
36    for which the taxpayer voluntarily complies under this section.

37    (3) No penalty may be waived under this ~~chapter~~ article if the  
38    penalty imposed is attributable to an assessment of taxes that  
39    became due and payable prior to December 31, 2003.

(4) The taxpayer may file a claim for refund under Chapter 6 (commencing with Section 19301) of this part. Notwithstanding Section 19331, the taxpayer may not file an appeal to the board until after either of the following:

(A) The date the Franchise Tax Board takes action on the claim for refund for the tax year to which this ~~chapter~~ *article* applies.

(B) The later of either of the following dates:

(i) The date that is 180 days after the date of a final determination by the Internal Revenue Service with respect to the transaction or transactions to which this ~~chapter~~ *article* applies.

(ii) The date that is four years after the date the claim for refund was filed or one year after full payment of all tax, including penalty and interest was made, whichever date is later.

(5) The taxpayer shall be subject to the accuracy related penalty under Section 19164.

(A) The penalty may be assessed:

(i) When the Franchise Tax Board takes action on the claim for refund.

(ii) When a federal determination becomes final for the same issue, in which case the penalty shall be assessed (and may not be abated) if the penalty was assessed at the federal level.

(B) In determining the amount of the underpayment of tax, Treasury Regulation Section 1.6664-2(c)(2), as promulgated under Section 6664 of the Internal Revenue Code, relating to qualified amended returns, shall not apply. The amount of the underpayment is the difference between the amount of tax shown on the original return and the correct amount of tax for the taxable year. The underpayment amount shall not be less than the amount of the claim for refund filed by the taxpayer under paragraph (4) that was denied.

(C) The penalty is due and payable upon notice and demand pursuant to Section 19049. Only after the taxpayer has paid all amounts due, including the penalty, and the claim is denied in whole or in part, may the taxpayer file an appeal under Chapter 6 (commencing with Section 19301), of this part in conjunction with the appeal filed under paragraph (4).

(c) A taxpayer's election under this section shall be made for all taxable years of the taxpayer governed by this ~~chapter~~ *article*. A separate election for each taxable year governed by this ~~chapter~~ *article* is not allowed.

1     *SEC. 14. Section 19753 of the Revenue and Taxation Code, as*  
2     *added by Section 13 of Chapter 654 of the Statutes of 2003, is*  
3     *repealed.*

4     ~~19753. (a) This chapter does not apply to violations of this~~  
5     ~~part for which, as of December 31, 2003, any of the following~~  
6     ~~applies:~~

7     ~~(1) A criminal complaint was filed against the taxpayer in~~  
8     ~~connection with an abusive tax avoidance transaction or~~  
9     ~~transactions.~~

10    ~~(2) The taxpayer is the subject of a criminal investigation in~~  
11    ~~connection with an abusive tax avoidance transaction or~~  
12    ~~transactions.~~

13    ~~(b) No refund or credit shall be granted with respect to any~~  
14    ~~penalty paid prior to the time the taxpayer participates in the~~  
15    ~~voluntary compliance initiative authorized by this chapter.~~

16    ~~(c) For purposes of this chapter, an “abusive tax avoidance~~  
17    ~~transaction” means a plan or arrangement devised for the principal~~  
18    ~~purpose of avoiding tax. Abusive tax avoidance transactions~~  
19    ~~include, but are not limited to, “listed transactions” as described~~  
20    ~~in subdivision (a) of Section 18407.~~

21    *SEC. 15. Section 19753 of the Revenue and Taxation Code, as*  
22    *added by Section 13 of Chapter 656 of the Statutes of 2003, is*  
23    *amended to read:*

24    ~~19753. (a) This chapter article does not apply to violations of~~  
25    ~~this part for which, as of December 31, 2003, any of the following~~  
26    ~~applies:~~

27    ~~(1) A criminal complaint was filed against the taxpayer in~~  
28    ~~connection with an abusive tax avoidance transaction or~~  
29    ~~transactions.~~

30    ~~(2) The taxpayer is the subject of a criminal investigation in~~  
31    ~~connection with an abusive tax avoidance transaction or~~  
32    ~~transactions.~~

33    ~~(b) No refund or credit shall be granted with respect to any~~  
34    ~~penalty paid prior to the time the taxpayer participates in the~~  
35    ~~voluntary compliance initiative authorized by this chapter article.~~

36    ~~(c) For purposes of this chapter article, an “abusive tax~~  
37    ~~avoidance transaction” means a plan or arrangement devised for~~  
38    ~~the principal purpose of avoiding tax. Abusive tax avoidance~~  
39    ~~transactions include, but are not limited to, “listed transactions”~~  
40    ~~as described in paragraph (4) of subdivision (a) of Section 18407.~~

1     *SEC. 16. Section 19754 of the Revenue and Taxation Code, as*  
2     *added by Section 13 of Chapter 654 of the Statutes of 2003, is*  
3     *repealed.*

4     ~~19754. (a) The voluntary compliance initiative described in~~  
5     ~~this chapter applies to any taxpayer who was not eligible to~~  
6     ~~participate in the Internal Revenue Service's Offshore Voluntary~~  
7     ~~Compliance Initiative described in Revenue Procedure 2003-11,~~  
8     ~~and during the period from January 1, 2004, to April 15, 2004,~~  
9     ~~does both of the following:~~

10    ~~(1) Files an amended tax return under this part for each taxable~~  
11    ~~year for which the taxpayer has previously filed a tax return using~~  
12    ~~an abusive tax avoidance transaction to underreport the taxpayer's~~  
13    ~~tax liability for that taxable year. Each amended return shall report~~  
14    ~~all income from all sources, without regard to the abusive tax~~  
15    ~~avoidance transaction.~~

16    ~~(2) Except as provided in subdivision (b), pays in full all taxes~~  
17    ~~and interest due.~~

18    ~~(b) The Franchise Tax Board may enter into an installment~~  
19    ~~payment agreement in lieu of the full payment required under~~  
20    ~~paragraph (2) of subdivision (a). Any installment payment~~  
21    ~~agreement authorized by this subdivision shall include interest on~~  
22    ~~the unpaid amount at the rate prescribed in Section 19521. Failure~~  
23    ~~by the taxpayer to fully comply with the terms of the installment~~  
24    ~~payment agreement shall render the waiver of penalties null and~~  
25    ~~void, and the total amount of tax, interest, and all penalties shall~~  
26    ~~be immediately due and payable.~~

27    ~~(c) After April 15, 2004, the Franchise Tax Board may issue a~~  
28    ~~deficiency assessment upon an amended return filed pursuant to~~  
29    ~~subdivision (a), impose penalties, or initiate criminal action under~~  
30    ~~this part with respect to the difference between the amount shown~~  
31    ~~on that return and the correct amount of tax. This action shall not~~  
32    ~~invalidate any waivers granted under Section 19752.~~

33    ~~(d) In addition to any other authority to examine returns, for the~~  
34    ~~purpose of improving state tax administration, the Franchise Tax~~  
35    ~~Board may inquire into the facts and circumstances related to the~~  
36    ~~use of abusive tax avoidance transactions to underreport the tax~~  
37    ~~liabilities for which a taxpayer has participated in the voluntary~~  
38    ~~compliance initiative under this chapter. Taxpayers shall cooperate~~  
39    ~~fully with inquiries described in this subdivision. Failure by a~~  
40    ~~taxpayer to fully cooperate in an inquiry described in this~~

1 ~~subdivision shall render the waiver of penalties under this chapter~~  
2 ~~null and void and the taxpayer may be assessed any penalties that~~  
3 ~~may apply.~~

4 *SEC. 17. Section 19754 of the Revenue and Taxation Code, as*  
5 *added by Section 13 of Chapter 656 of the Statutes of 2003, is*  
6 *amended to read:*

7 19754. (a) The voluntary compliance initiative described in  
8 ~~this chapter article~~ applies to any taxpayer who was not eligible  
9 to participate in the Internal Revenue Service's Offshore Voluntary  
10 Compliance Initiative described in Revenue Procedure 2003-11,  
11 and during the period from January 1, 2004, to April 15, 2004,  
12 does both of the following:

13 (1) Files an amended tax return under this part for each taxable  
14 year for which the taxpayer has previously filed a tax return using  
15 an abusive tax avoidance transaction to underreport the taxpayer's  
16 tax liability for that taxable year. Each amended return shall report  
17 all income from all sources, without regard to the abusive tax  
18 avoidance transaction.

19 (2) Except as provided in subdivision (b), pays in full all taxes  
20 and interest due.

21 (b) The Franchise Tax Board may enter into an installment  
22 payment agreement in lieu of the full payment required under  
23 paragraph (2) of subdivision (a). Any installment payment  
24 agreement authorized by this subdivision shall include interest on  
25 the unpaid amount at the rate prescribed in Section 19521. Failure  
26 by the taxpayer to fully comply with the terms of the installment  
27 payment agreement shall render the waiver of penalties null and  
28 void, and the total amount of tax, interest, and all penalties shall  
29 be immediately due and payable.

30 (c) After April 15, 2004, the Franchise Tax Board may issue a  
31 deficiency assessment upon an amended return filed pursuant to  
32 subdivision (a), impose penalties, or initiate criminal action under  
33 this part with respect to the difference between the amount shown  
34 on that return and the correct amount of tax. This action shall not  
35 invalidate any waivers granted under Section 19752.

36 (d) In addition to any other authority to examine returns, for the  
37 purpose of improving state tax administration, the Franchise Tax  
38 Board may inquire into the facts and circumstances related to the  
39 use of abusive tax avoidance transactions to underreport the tax  
40 liabilities for which a taxpayer has participated in the voluntary

compliance initiative under this ~~chapter article~~. Taxpayers shall cooperate fully with inquiries described in this subdivision. Failure by a taxpayer to fully cooperate in an inquiry described in this subdivision shall render the waiver of penalties under this ~~chapter article~~ null and void and the taxpayer may be assessed any penalties that may apply.

*SEC. 18. The heading of Article 2 (commencing with Section 19755) is added to Chapter 9.5 of Part 10.2 of Division 2 of the Revenue and Taxation Code, immediately preceding Section 19755, to read:*

*Article 2. Statute of Limitations for Abusive Tax Avoidance Transactions*

*SEC. 19. Section 19755 of the Revenue and Taxation Code, as added by Section 13 of Chapter 654 of the Statutes of 2003, is repealed.*

~~19755. (a) Notwithstanding Section 19057, with respect to proposed deficiency assessments related to an abusive tax avoidance transaction, as defined in subdivision (c) of Section 19753, a notice of a proposed deficiency assessment may be mailed to the taxpayer within eight years after the return was filed, or within the period otherwise provided in Article 3 (commencing with Section 19031) of Chapter 4 of this part, whichever expires later.~~

~~(b) This section shall apply to any return filed under this part on or after January 1, 2000.~~

*SEC. 20. Section 19755 of the Revenue and Taxation Code, as added by Section 13 of Chapter 656 of the Statutes of 2003, is amended to read:*

19755. (a) (1) Notwithstanding Section 19057, and except as provided in paragraph (2), with respect to proposed deficiency assessments related to an abusive tax avoidance transaction, ~~as defined in subdivision (c) of Section 19753~~, a notice of a proposed deficiency assessment may be mailed to the taxpayer within eight years after the return was filed, or within the period otherwise provided in Article 3 (commencing with Section 19031) of Chapter 4 of this part, whichever expires later.

(2) For notices mailed on or after August 1, 2011, with respect to proposed deficiency assessments related to an abusive tax

1 *avoidance transaction, a notice of a proposed deficiency*  
2 *assessment may be mailed to the taxpayer within 12 years after*  
3 *the return was filed, or within the period otherwise provided in*  
4 *Article 3 (commencing with Section 19031) of Chapter 4 of this*  
5 *part, whichever expires later.*

6 (b) This section shall apply to any return filed under this part  
7 on or after January 1, 2000. Paragraph (2) of subdivision (a) shall  
8 apply to taxable years that have not been closed by a statute of  
9 limitations, res judicata, or otherwise, as of August 1, 2011.

10 SEC. 21. Article 3 (commencing with Section 19761) is added  
11 to Chapter 9.5 of Part 10.2 of Division 2 of the Revenue and  
12 Taxation Code, to read:

13  
14 *Article 3. Voluntary Compliance Initiative Two*  
15

16 19761. (a) The Franchise Tax Board shall develop and  
17 administer a voluntary compliance initiative for taxpayers subject  
18 to Part 10 (commencing with Section 17001) and Part 11  
19 (commencing with Section 23001), as provided in this article.

20 (b) The voluntary compliance initiative shall be conducted  
21 during the period from August 1, 2011, to October 31, 2011,  
22 inclusive, pursuant to Section 19764. This initiative shall apply to  
23 tax liabilities attributable to the use of abusive tax avoidance  
24 transactions and to unreported income from the use of offshore  
25 financial arrangements for taxable years beginning before January  
26 1, 2011.

27 (c) The Franchise Tax Board shall issue forms and instructions  
28 and may take any other actions necessary, including the use of  
29 closing agreements, to implement this article.

30 (d) The Franchise Tax Board shall publicize the voluntary  
31 compliance initiative so as to maximize public awareness of and  
32 participation in the initiative. The Franchise Tax Board shall  
33 coordinate to the highest degree possible its publicity efforts and  
34 other actions taken in implementing this article.

35 (e) Any correspondence mailed by the Franchise Tax Board to  
36 a taxpayer at the taxpayer's last known address outlining the  
37 voluntary compliance initiative under this article constitutes  
38 "contact" within the meaning of Treasury Regulation Section  
39 1.6664-2(c)(3), relating to qualified amended returns, and Sections  
40 19164.5 and 19777.

1 19762. (a) Any taxpayer who meets the requirements of Section  
2 19764 may elect to participate in the voluntary compliance  
3 initiative under this article.

4 (b) For taxpayers electing to participate in the voluntary  
5 compliance initiative under this article, all of the following shall  
6 apply:

7 (1) (A) Except as provided in subparagraph (B), the Franchise  
8 Tax Board shall waive or abate all penalties imposed by this part,  
9 for all taxable years where the taxpayer elects to participate in  
10 the initiative, as a result of the unreported tax liabilities  
11 attributable to the use of abusive tax avoidance transactions and  
12 to unreported income from the use of offshore financial  
13 arrangements.

14 (B) The penalties imposed under Section 19138 or 19777.5 may  
15 not be waived.

16 (2) Except as provided in Section 19763, no criminal action  
17 shall be brought against the taxpayer for the taxable years with  
18 respect to issues for which the taxpayer voluntarily complies under  
19 this article.

20 (3) No penalty assessed after July 31, 2011, may be waived or  
21 abated under this article if the penalty imposed is attributable to  
22 an assessment of taxes that became final prior to July 31, 2011.  
23 For purposes of this paragraph, assessment of taxes does not  
24 include taxes self-assessed on an original or amended return filed  
25 before August 1, 2011.

26 (4) Notwithstanding Chapter 6 (commencing with Section  
27 19301) of this part, no refund or credit shall be allowed for  
28 amounts paid in connection with abusive tax avoidance  
29 transactions or unreported income from the use of offshore  
30 financial arrangements under this article.

31 19763. (a) This article does not apply to violations of this part  
32 for which, as of July 31, 2011, any of the following applies:

33 (1) A criminal complaint was filed against the taxpayer in  
34 connection with an abusive tax avoidance transaction, transactions,  
35 or unreported income from the use of an offshore financial  
36 arrangement or arrangements.

37 (2) The taxpayer is the subject of a criminal investigation in  
38 connection with an abusive tax avoidance transaction, transactions,  
39 or unreported income from the use of an offshore financial  
40 arrangement or arrangements.

1 (b) No refund or credit shall be allowed with respect to any  
2 penalty paid prior to the time the taxpayer participates in the  
3 voluntary compliance initiative authorized by this article.

4 (c) For purposes of this article, an “abusive tax avoidance  
5 transaction” has the same meaning as in Section 19777, as  
6 amended by the act adding this section.

7 19764. (a) The voluntary compliance initiative described in  
8 this article applies to any taxpayer who, during the period from  
9 August 1, 2011, to October 31, 2011, makes an election as  
10 described in Section 19762 and does both of the following:

11 (1) (A) Files an amended tax return under this part for each  
12 taxable year for which the taxpayer has previously filed a tax  
13 return using an abusive tax avoidance transaction or an offshore  
14 financial arrangement to underreport the taxpayer’s tax liability  
15 for that taxable year or failed to include income from the offshore  
16 financial arrangement. Each amended return shall report all  
17 income from all sources, without regard to the abusive tax  
18 avoidance transaction, including all income from offshore financial  
19 arrangements. No deduction shall be allowed for transaction costs  
20 associated with an abusive tax avoidance transaction or for  
21 transaction or other costs associated with unreported income from  
22 the use of an offshore financial arrangement.

23 (B) For purposes of this article, an “offshore financial  
24 arrangement” means any transaction involving financial  
25 arrangements that in any manner rely on the use of offshore  
26 payment cards, including credit, debit, or charge cards, issued by  
27 banks in foreign jurisdictions or offshore financial arrangements,  
28 including arrangements with foreign banks, financial institutions,  
29 corporations, partnerships, trusts, or other entities to avoid or  
30 evade income or franchise tax.

31 (2) Except as provided in subdivision (b), pays in full all taxes  
32 and interest due.

33 (b) The Franchise Tax Board may enter into an installment  
34 payment agreement in lieu of the full payment required by  
35 paragraph (2) of subdivision (a), but only if final payment under  
36 the terms of that installment payment agreement is due and paid  
37 no later than June 15, 2012. Any installment payment agreement  
38 authorized by this subdivision shall include interest on the unpaid  
39 amount at the rate prescribed in Section 19521. Failure by the  
40 taxpayer to fully comply with the terms of the installment payment

1 *agreement shall render the waiver of penalties null and void, and*  
2 *the total amount of tax, interest, and all penalties shall be*  
3 *immediately due and payable.*

4 *(c) After October 31, 2011, the Franchise Tax Board may issue*  
5 *a deficiency assessment upon an amended return filed pursuant*  
6 *to subdivision (a), impose penalties, or initiate criminal action*  
7 *under this part with respect to the difference between the amount*  
8 *shown on that return and the correct amount of tax. This action*  
9 *shall not invalidate any waivers granted under Section 19762.*

10 *(d) In addition to any other authority to examine returns, for*  
11 *the purpose of improving state tax administration, the Franchise*  
12 *Tax Board may inquire into the facts and circumstances related*  
13 *to the use of abusive tax avoidance transactions or offshore*  
14 *financial arrangements to underreport the tax liabilities for which*  
15 *a taxpayer has participated in the voluntary compliance initiative*  
16 *under this article. Taxpayers shall cooperate fully with inquiries*  
17 *described in this subdivision. Failure by a taxpayer to fully*  
18 *cooperate in an inquiry described in this subdivision shall render*  
19 *the waiver of penalties under this article null and void and the*  
20 *taxpayer may be assessed any penalties that may apply.*

21 *SEC. 22. The heading of Article 4 (commencing with Section*  
22 *19772) is added to Chapter 9.6 of Part 10.2 of Division 2 of the*  
23 *Revenue and Taxation Code, immediately preceding Section 19772,*  
24 *to read:*

25  
26 *Article 4. Penalties and Interest*  
27

28 *SEC. 23. Section 19774 of the Revenue and Taxation Code is*  
29 *amended to read:*

30 *19774. (a) If a taxpayer has a noneconomic substance*  
31 *transaction understatement for any taxable year, there shall be*  
32 *added to the tax an amount equal to 40 percent of the amount of*  
33 *that understatement.*

34 *(b) (1) Subdivision (a) shall be applied by substituting “20*  
35 *percent” for “40 percent” with respect to the portion of any*  
36 *noneconomic substance transaction understatement with respect*  
37 *to which the relevant facts affecting the tax treatment of the item*  
38 *are adequately disclosed in the return or a statement attached to*  
39 *the return.*

(2) For taxable years beginning before January 1, 2003, “adequately disclosed” includes the disclosure of the tax shelter identification number on the taxpayer’s return as required by subdivision (c) of Section 18628, as applicable for the year in which the transaction was entered into.

(c) For purposes of this section:

(1) The term “noneconomic substance transaction understatement” means any amount which would be an understatement under Section 6662A(b) of the Internal Revenue Code, as modified by subdivision (b) of Section 19164.5 if Section 6662A(b) of the Internal Revenue Code were applied by taking into account items attributable to noneconomic substance transactions rather than items to which Section 6662A(b) applies.

(2) A “noneconomic substance transaction” ~~includes the disallowance~~ *includes:*

(A) *The disallowance* of any loss, deduction or credit, or addition to income attributable to a determination that the disallowance or addition is attributable to a transaction or arrangement that lacks economic substance including a transaction or arrangement in which an entity is disregarded as lacking economic substance. A transaction shall be treated as lacking economic substance if the taxpayer does not have a valid nontax California business purpose for entering into the transaction.

(B) *Any disallowance of claimed tax benefits by reason of a transaction lacking economic substance, within the meaning of Section 7701(o) of the Internal Revenue Code, relating to clarification of economic substance doctrine, as added by Section 1409(a) of the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), except as otherwise provided.*

(i) *For purposes of this subparagraph, the phrase “apart from state income tax effects” shall be substituted for the phrase “apart from Federal income tax effects” in each place it appears in Section 7701(o)(1) of the Internal Revenue Code.*

(ii) *For purposes of this subparagraph, the phrase “any federal or local income tax effect which is related to a state income tax effect” shall be treated in the same manner as a state income tax effect” is substituted for the phrase “any State or local income tax effect which is related to a Federal income tax effect shall be treated in the same manner as a Federal income tax effect” in Section 7701(o)(3) of the Internal Revenue Code.*

(d) (1) If the notice of proposed assessment of additional tax has been sent with respect to a penalty to which this section applies, only the Chief Counsel of the Franchise Tax Board may compromise all or any portion of that penalty.

(2) The exercise of authority under paragraph (1) shall be at the sole discretion of the Chief Counsel of the Franchise Tax Board and may not be delegated.

(3) Notwithstanding any other law or rule of law, any determination under this subdivision may not be reviewed in any administrative or judicial proceeding.

*(e) Notwithstanding anything to the contrary in this section, if a penalty has been assessed for federal income tax purposes pursuant to Section 6662(b)(6) of the Internal Revenue Code, as added by Section 1409(b) of the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), on an underpayment attributable to the disallowance of claimed tax benefits by reason of a transaction lacking economic substance, then a penalty shall be imposed under this section for that portion of an understatement attributable to that transaction, and shall not be abated unless the taxpayer can establish that the imposition of the federal penalty under Section 6662 of the Internal Revenue Code for an underpayment attributable to that transaction was clearly erroneous.*

*(f) The amendments made to this section by the act adding this subdivision shall apply to notices mailed on or after the effective date of the act adding this subdivision.*

SEC. 24. Section 19777 of the Revenue and Taxation Code is amended to read:

19777. (a) If a taxpayer has been contacted by the Franchise Tax Board regarding ~~a reportable transaction, as defined in Section 6707A(c)(1) of the Internal Revenue Code with respect to which the requirements of Section 6664(d)(2)(A) of the Internal Revenue Code are not met, any listed transaction, as defined in Section 6707A(c)(2) of the Internal Revenue Code, or a gross misstatement within the meaning of Section 6404(g)(2)(D) of the Internal Revenue Code, and has a deficiency, an abusive tax avoidance transaction, and has a deficiency attributable to an abusive tax avoidance transaction,~~ there shall be added to the tax an amount equal to 100 percent of the interest payable under Section 19101 for the period beginning on the last date prescribed by law for the

1 payment of that tax (determined without regard to extensions) and  
2 ending on the date the notice of proposed assessment is mailed.

3 (b) For purposes of this section, “abusive tax avoidance  
4 transaction” means any of the following:

5 (1) A tax shelter as defined in Section 6662(d)(2)(C) of the  
6 Internal Revenue Code. For purposes of this chapter, Section  
7 6662(d)(2)(C) of the Internal Revenue Code is modified by  
8 substituting the phrase “income or franchise tax” for “Federal  
9 income tax.”

10 (2) A reportable transaction, as defined in Section 6707A(c)(1)  
11 of the Internal Revenue Code, with respect to which the  
12 requirements of Section 6664(d)(2)(A) of the Internal Revenue  
13 Code are not met.

14 (3) A listed transaction, as defined in Section 6707A(c)(2) of  
15 the Internal Revenue Code.

16 (4) A gross misstatement, within the meaning of Section  
17 6404(g)(2)(D) of the Internal Revenue Code.

18 (5) Any transaction to which Section 19774 applies.

19 ~~(b)~~

20 (c) The penalty imposed by this section is in addition to any  
21 other penalty imposed under Part 10 (commencing with Section  
22 17001), Part 11 (commencing with Section 23001), or this part.

23 (d) (1) If a taxpayer files an amended return reporting an  
24 abusive tax avoidance transaction, described in subdivision (b),  
25 after the taxpayer is contacted by the Franchise Tax Board  
26 regarding that abusive tax avoidance transaction but before a  
27 notice of proposed assessment is issued under Section 19033, then  
28 the amount of the penalty under this section shall be 50 percent  
29 of the interest payable under Section 19101 with respect to the  
30 amount of any additional tax reflected in the amended return  
31 attributable to that abusive tax avoidance transaction.

32 (2) If a notice of proposed assessment under Section 19033,  
33 with respect to an abusive tax avoidance transaction as described  
34 in subdivision (a), is issued after the amended return described in  
35 paragraph (1) is filed, the penalty imposed pursuant to subdivision  
36 (a) shall be applicable to the additional tax reflected in the notice  
37 of proposed assessment attributable to that abusive tax avoidance  
38 transaction in excess of the additional tax shown on the amended  
39 return.

1     (e) *The amendments made to this section by the act adding this*  
2 *subdivision shall apply to notices mailed on or after the effective*  
3 *date of that act and to amended returns filed more than 90 days*  
4 *after that effective date with respect to taxable years for which the*  
5 *statute of limitations for mailing a notice of proposed assessment*  
6 *has not expired as of that date.*

7     SEC. 25. *No reimbursement is required by this act pursuant*  
8 *to Section 6 of Article XIII B of the California Constitution because*  
9 *the only costs that may be incurred by a local agency or school*  
10 *district will be incurred because this act creates a new crime or*  
11 *infraction, eliminates a crime or infraction, or changes the penalty*  
12 *for a crime or infraction, within the meaning of Section 17556 of*  
13 *the Government Code, or changes the definition of a crime within*  
14 *the meaning of Section 6 of Article XIII B of the California*  
15 *Constitution.*

16     SEC. 26. *The sum of one thousand dollars (\$1,000) is hereby*  
17 *appropriated from the General Fund to the State Board of*  
18 *Equalization for administrative operations.*

19     SEC. 27. *This act addresses the fiscal emergency declared and*  
20 *reaffirmed by the Governor by proclamation on January 20, 2011,*  
21 *pursuant to subdivision (f) of Section 10 of Article IV of the*  
22 *California Constitution.*

23     SEC. 28. *This act is a bill providing for appropriations related*  
24 *to the Budget Bill within the meaning of subdivision (e) of Section*  
25 *12 of Article IV of the California Constitution, has been identified*  
26 *as related to the budget in the Budget Bill, and shall take effect*  
27 *immediately.*

28     SEC. 29. *This act is an urgency statute necessary for the*  
29 *immediate preservation of the public peace, health, or safety within*  
30 *the meaning of Article IV of the Constitution and shall go into*  
31 *immediate effect. The facts constituting the necessity are:*

32     *In order to make changes necessary for the implementation of*  
33 *the Budget Act of 2011, it is necessary that this act take effect*  
34 *immediately.*

35     ~~SECTION 1. It is the intent of the Legislature to enact statutory~~  
36 ~~changes relating to the Budget Act of 2011.~~